

From: AI Armendariz/R6/USEPA/US
Sent: 3/1/2011 3:37:49 PM
To: starfield.lawrence@epamail.epa.gov
CC:
Subject: Fw: Follow up to NYT story

Interesting narrative from previous PA DEP head.

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----- Original Message -----

From: Bob Sussman
Sent: 03/01/2011 03:27 PM EST
To: Bob Perciasepe; Nancy Stoner; Cynthia Giles-AA; AI Armendariz; Shawn Garvin
Subject: Fw: Follow up to NYT story

Worthy of a close read.

Robert M. Sussman
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(202)-564-7397
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----- Forwarded by Bob Sussman/DC/USEPA/US on 03/01/2011 03:26 PM -----

From: [Ex. 6 - Personal Privacy]
To: [Ex. 6 - Personal Privacy] Bob Sussman/DC/USEPA/US@EPA, [Ex. 6 - Personal Privacy]
Cc: [Ex. 6 - Personal Privacy]
Date: 03/01/2011 01:02 PM
Subject: RE: Follow up to NYT story

Here's the blog post Dan mentioned from John Hanger (former PA DEP Secretary):

<http://www.johnhanger.blogspot.com/>

SUNDAY, FEBRUARY 27, 2011

Statement regarding Sunday NYT February 27th Drilling Article

No compromises can be made about the safety of drinking water. The Sunday NYT article raises serious issues that must be definitely resolved immediately.

The most serious issue raised by the NYT is whether or not unhealthy levels of radium are in the drinking water as a result of gas drilling wastewater.

Good reasons exist to believe that the answer is no, including the new drilling wastewater disposal rule that went into effect in August 2010 and the now widespread use of recycling technology to manage at least 70% of drilling wastewater. But belief is not good enough.

We must not drift into a war of competing theories or studies. We need the facts. Pennsylvanians deserve nothing less.

The Pennsylvania Department of Environmental Protection should order today all public water systems in Pennsylvania to test immediately for radium or radioactive pollutants and report as soon as good testing allows the results to the public. Only testing of the drinking water for these pollutants can resolve the issue raised by the NYT.

Moreover, once the results come back and no matter what the results are, testing should continue on a regular basis at least at the 65 public water systems identified by the NYT.

Why did I not take these steps when I was Secretary is a fair question? One answer is that a much stronger rule governing drilling wastewater discharges became final in August 2010 that limited future drilling wastewater discharges (See below for much more detail).

But the main reason is that I was not presented with information in the manner that the NYT does in this article. The NYT references confidential reports, anonymous statements supposedly made by EPA scientists, and other material that I have never seen until this article. I was informed by agency radiation experts that the radiation levels were not a threat to truck drivers, workers at sewage treatment facilities or the public. To be clear the buck stopped with me up to January 18th, 2011 and I believe the agency staff were handling this issue in a serious, careful manner. I still believe that to be in the case

But as I said, beliefs are not good enough. Now only testing can resolve one way or another the issue about radium that the NYT raises.

Having said that, some further points about the article need to be made.

1. The piece looks at a three year period and characterizes regulation in Pennsylvania as lax. Lax regulation is the theme or narrative of the piece and virtually all elements and word choices of the article are consistent with that theme.

Buried late in this enormous piece is a paragraph that states that the rules today are much stronger. Shortly after I became Secretary on September 2nd, 2010, I concluded Pennsylvania's rules governing gas drilling and protecting our waters needed to be strengthened. I directed 4 new policies or rules be drafted and completed as soon as possible. All now have been.

2. The 4 strengthening regulatory packages that were barely or not all mentioned in the NYT article included:

First, finalizing protective water withdrawal policies requiring at the time of the drilling application the submittal of a water plan that insured water withdrawals would not damage streams even during droughts.

Second, I ordered a major rule to end Pennsylvania's decades long practice of allowing unlimited amounts of drilling wastewater untreated for total dissolved solids (salts etc) into rivers and streams and won passage of this rule over opposition from the gas industry, the coal mining industry, the Pennsylvania Chamber of Business and Industry, and other supporters of the gas industry.

The new drilling wastewater rule became effective in August 2010 and applies to all sources of TDS pollution, including mining and industrial sources. The rule, however, singles out drilling wastewater for the strongest requirements. The 2010 rule requires new or existing drilling wastewater plants that expand to treat drilling wastewater to the Safe Drinking Water Standard for TDS if it is returned to a river.

The rule does allow plants that had been operating for many decades to conditionally do so if they do not expand and if the river to which they discharge has TDS levels below 75% of the Safe Drinking Water standard of 500 mg/liter. The NYT erroneously suggests that the existing plants if they do not expand can continue operating under the rule no matter their impact on the receiving stream. False. If the receiving stream has TDS increase as a result of the existing plants discharge or other reasons, these existing plants will have to modify how they operate and possibly cease operations.

The drilling wastewater rule is hugely important and must be enforced fully.

Third, I ordered a strengthening across the board of the rules governing drilling well design, materials, construction, monitoring, testing, and disclosure of chemicals. This rule became effective on February 5, 2011 after being begun in 2009. They are state of the art standards. They must be followed and enforced.

Fourth, we enacted a 150 foot buffer requirement from all development for High Quality streams, Pennsylvania's best waters. About 22,000 miles of streams receive this protection or one-quarter of all of Pennsylvania's streams. This rule commenced in 2009 and was final in November 2010.

3. I also concluded in 2008 that the DEP gas staff was too small so we more than doubled the drilling staff from 88 to 202 positions. This substantial staffing increase was paid for by using emergency rulemaking powers to raise the drilling application fee to \$5,000 to \$10,000 per Marcellus application from the ridiculous amount of \$100 that had been set in 1984 and never raised. We hired in 2009 and twice in 2010. We opened a new drilling staff office in Williamsport in 2009 and another in Scranton during 2010.

Pennsylvania is the only state that has hired substantial or any staff for its drilling operation. The NYT does not say that, because it does not fit its narrative of lax Pennsylvania regulation. Indeed, the reporter deliberately did not include a long list of actions by DEP that represented strong enforcement.

4. On these first 3 points, in a sea of ink, the NYT article just says: "Recently Pennsylvania has tried to increase its oversight, doubling the number of regulators, improving well-design requirements and sharply decreasing how much drilling waste many treatment plants can accept or release." Yes, indeed. See the above for some of the details.

5. The NYT piece makes errors when discussing the 2008 high TDS levels on the Mon River. The NYT fails to state that it was state regulators, the Pennsylvania Department of Environmental Protection, at my direction that issued Drinking Water Advisories to the public when TDS levels on the Mon River exceeded the Safe Drinking Water Act secondary drinking water standards.

6. The NYT piece does not state clearly or fully that in October 2008 that DEP issued orders to municipal sewage plants discharging to the Mon River or its tributaries to cut by 95% its drilling wastewater volumes. Those orders were not lifted. The order to cut by 95% drilling wastewater discharges applied to any municipal treatment plant that had been taking drilling wastewater without a specific permit to do so.

Reporting accurately and fully this action plus that DEP issued the Public Water Advisory would not fit with the article's determined narrative of lax regulation. Some themes just cannot be moved no matter what.

7. Near the end of the piece the article argues that DEP has lax regulation. Its major evidence for that proposition is that DEP issues twice as many warning as fines for violations.

Here is what the NYT completely and apparently willfully ignored or placed outside of the main story due to the famous space limitations. It is quite a coincident that the facts or points that were ignored completely or not included in the main story are the ones showing strong regulation.

1. Telling its readers that DEP has issued 1400 violations to the industry just for the period from January 1, 2008 to June 30, 2010.

2. Telling its readers that DEP has issued to companies orders to stop drilling for weeks and months; other orders to companies to stop fracking for weeks and months; orders to companies to pay fully for all spills and leaks. These orders cost companies tens of millions of dollars and greatly exceed the amount of fines. Fines run into the millions, but the Legislature should raise the maximum amount of fines.

3. Telling its readers that DEP required Cabot Oil and Gas to plug wells and repair wells at the cost of many millions of dollars to remedy a gas migration that impacted 19 water wells.

4. Telling its readers that DEP won a settlement with Cabot that paid the 19 impacted families on average \$200,000 per family or twice the market value of the property, while allowing families to keep their property and their mineral rights. Payments and yet another major fine exceeded \$4 million in this single action. These payments were won even for 14 of the 19 properties were testing indicated that methane had been removed from the water supplies.

5. Telling its readers that DEP and the State Police do major truck inspection operations, pulling drilling trucks over for inspection. That these repeated operations have put about 40% of the drilling trucks inspected out of service.

6. Telling its readers that the DEP gas drilling regulatory program was reviewed in 2010 by an Independent Auditing organization called STRONGER that includes reviewers from industry, other states, and environmental organizations. The DEP regulatory program received high marks. Of course the reporter did not include the fact of this independent audit in the story.

These are facts and important ones for the public to know and for a good reporter to report. There are still more that could be shared with a reporter interested.

UPDATE

Lastly, though I am quoted in the piece, this reporter never interviewed me prior to the publication of the Sunday article. The reporter claims that he told DEP staff that he wanted to interview me. I was never told so and have not confirmed the request. As Secretary, I was interviewed hundreds and probably thousands of times. I made myself totally accessible to reporters. My staff knew that I was available to reporters. This reporter today says he asked Governor Corbett's administration at DEP on January 21st, three days after Governor Rendell and I left office, to confirm the quotation that the reporter strung together from some other source. The words that I find myself saying in this piece were said by me somewhere at some time and in some context but they were not said in the context of an interview for this piece. The reporter never called me after January 18th for any purpose including to confirm the quotation that he put together for me. The reporter did not ask the new administration for my contact information after I left office. He made no attempt to reach me from January 18th until the piece was published, including again to confirm the quotation he uses. The reporter did make effort to contact my former colleague Secretary Quigley after he left office and did interview former Secretary Quigley about a week ago.

Update II

Secretary Quigley was a superb Secretary of the Department of Conservation and Natural Resources, the agency charged with managing state parks and state forests. He oversaw gas leasing of state forest land and did a great job in difficult circumstances, including writing a very protective lease for gas drilling on state forests. Secretary Quigley has unmatched dedication and knowledge about the state forests and parks.

Some confusion exists about the jurisdictions and roles of DCNR and DEP. The DCNR does not regulate the oil and gas industry in Pennsylvania. DEP does. The Department of Environmental Protection enforces the state Oil and Gas Act, the state clean streams law, the federal Clean Water Act, the federal Safe Drinking Water Act, the federal and state clean air laws, the state waste management laws and other provisions of law that apply to gas drilling. DEP promulgates all rules and regulations governing oil and gas drilling.

I suspect that I will have more to say on this soon.

-----Original Message-----

From: [Ex. 6 - Personal Privacy]
Sent: Tuesday, March 01, 2011 12:08 PM
To: 'Sussman.Bob@epamail.epa.gov'; [Ex. 6 - Personal Privacy]
Cc: [Ex. 6 - Personal Privacy]; 'Perciasepe.Bob@epamail.epa.gov'
Subject: Re: Follow up to NYT story

Bob P - we're getting started - let us know if you need the dial in info.

----- Original Message -----

From: Sussman.Bob@epamail.epa.gov <Sussman.Bob@epamail.epa.gov>
To: [Ex. 6 - Personal Privacy]
Cc: [Ex. 6 - Personal Privacy]; Perciasepe.Bob@epamail.epa.gov <Perciasepe.Bob@epamail.epa.gov>; [Ex. 6 - Personal Privacy]
Sent: Tue Mar 01 11:38:37 2011
Subject: Re: Follow up to NYT story

I'm coming over. bob will be on the phone.

Robert M. Sussman
Senior Policy Counsel to the Administrator Office of the Administrator
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US Environmental Protection Agency

From: [Ex. 6 - Personal Privacy]
To: Bob Sussman/DC/USEPA/US@EPA
Cc: "[Ex. 6 - Personal Privacy]"; Perciasepe/DC/USEPA/US@EPA, [Ex. 6 - Personal Privacy]; [Ex. 6 - Personal Privacy] >, Bob
Date: 03/01/2011 11:07 AM
Subject: Re: Follow up to NYT story

Just checking if you guys are planning to come over or if we shld just do on phone. Thanks.

Ex. 6 - Personal Privacy

----- Original Message -----

From: Sussman.Bob@epamail.epa.gov <Sussman.Bob@epamail.epa.gov>

To: Ex. 6 - Personal Privacy

Cc: Ex. 6 - Personal Privacy Perciasepe.Bob@epamail.epa.gov <Perciasepe.Bob@epamail.epa.gov> Ex. 6 - Personal Privacy

Sent: Tue Mar 01 08:26:46 2011

Subject: Re: Follow up to NYT story

Ex. 5 - Deliberative -- do you want to do the 12:00 mtg in person?

Robert M. Sussman

Senior Policy Counsel to the Administrator Office of the Administrator

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US Environmental Protection Agency

From:

Ex. 6 - Personal Privacy

To: Bob Sussman/DC/USEPA/US@EPA, Bob Perciasepe/DC/USEPA/US@EPA

Cc: Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

Date: 03/01/2011 07:44 AM

Subject: Re: Follow up to NYT story

Thanks Bob

Ex. 6 - Personal Privacy

From: Sussman.Bob@epamail.epa.gov <Sussman.Bob@epamail.epa.gov>

To: Ex. 6 - Personal Privacy Perciasepe.Bob@epamail.epa.gov <Perciasepe.Bob@epamail.epa.gov>

Cc: Ex. 6 - Personal Privacy Ex. 6 - Personal Privacy

Sent: Tue Mar 01 06:42:39 2011

Subject: Re: Follow up to NYT story

Ex. 5 - Deliberative I would hope by the end of the week; this has our full attention.

From: Ex. 6 - Personal Privacy

Sent: 02/28/2011 09:50 PM EST

To: Bob Sussman; Bob Perciasepe

Ex. 6 - Personal Privacy

Subject: Follow up to NYT story

Bob: Also, as we discussed, in addition to the narrative,

Ex. 5 - Deliberative

Ex. 5 - Deliberative